Court Northern District of New York, decided that the making of a general assignment, without preference, by an insolvent debtor, was an act of bankruptcy; that an express denial under oath of intent to defeat or delay the operations of the Bankrupt Act by making such assignment, was of no avail as against the conclusive legal presumption of such intent arising out of the admission of the execution of such assignment: 3 Bankrupt Reg. 98.

Prof. Greenleaf thus lays down the general principle applicable to all cases. "The law presumes every act, in itself unlawful, to have been criminally intended, until the contrary appears:" 1 Greenleaf on Ev. § 34; and this same presumption arises in civil cases: Ibid.

In the case in question, the person who issues an instrument unstamped, in violation of the revenue laws, does an unlawful act of which the natural and necessary consequences are that the provisions of the stamp act are evaded and government defrauded: and why should not this same general principle apply? Granted that the *intent* must be alleged and proved, yet proof of the unlawful act it would seem should make a *primâ facie* case on the question of intent. And such appears to be the view sanctioned by some of the decisions: See *Beebe* v. *Hutton*, 47 Barb. 187.

H. H. Bond.

THE PROPRIETARY TITLE OF THE PENNS.

As the last of the male descendants of William Penn has recently deceased, it becomes interesting to review the course of transmission of the title to the soil of Pennsylvania, vested in William Penn in fee, by charter of Charles II., dated the 4th of March 1681.

William by his will, after devising ten thousand acres in the province for the three children of his deceased son William, and ten thousand acres for his daughter Aubrey, devised all his lands, tenements, and hereditaments, rents, &c., in Pennsylvania and territories thereunto belonging, or elsewhere in America, unto Hannah his wife and others, and their heirs, in trust, to sell and dispose of so much thereof as might be necessary to pay his

debts; and all the rest of his lands and hereditaments whatsoever, situate, lying and being in America, to convey to his children by his present wife, in such proportions and estate as she should think fit. This will he confirmed 27th of 3d month 1712; and it was proved 3d November 1718. See Will Book, Philadelphia, No. I., p. 238.

William Penn left children by his wife Hannah, four sons, John, Thomas, Richard, and Dennis, and a daughter Margaret. Hannah Penn, after the death of Dennis in his minority, by deed of January 7th 1725 appointed and directed conveyance of one-half the province of Pennsylvania and of the three lower counties unto John Penn, her eldest son, and the other half equally to her sons Thomas Penn and Richard Penn, in fee.

June 24th 1735, Samuel Preston and James Logan, the surviving trustees, released said estates to John, Thomas, and Richard Penn.

On the 8th May 1732, the said three proprietaries, then owners in fee, executed articles covenanting with each other, binding themselves respectively to devise their shares to the eldest son in tail male, remainder to other sons in like manner; and if any should die without issue male, his share should go to the survivors or survivor and heirs as he should appoint; and if no appointment should be made, then it is to go equally to the survivors and their heirs male; chargeable in either case with provisions for widows and daughters. And if either of said parties should die without any issue he is to appoint his share or estate to the other of said parties or either of them as he should think fit, with power to charge certain sums thereon. And if either should die without any appointment, then his share is to go to the survivors or survivor and heirs, subject to charges in favor of any widow, and of half sister Letitia Aubrey, widow, and the children of whole sister Margaret Freame. With power of revocation by all, or by the survivors of one dying without issue male, but without prejudice to appointments made by deceased.

On the 24th October 1746, the said John Penn made his will, which was proved September 1st 1747. He died unmarried and without issue in 1746. See Will Book II. p. 295. He devised his moiety of Pennsylvania and of the three lower counties (now state of Delaware) unto his brother Thomas Penn for life, and after his death to the first son of Thomas in tail male, and in

default of issue, to the second, third, fourth, fifth, and other sons according to priority of age in tail male; and in default of such issue, then to his brother Richard Penn for life, remainder to Richard's son John for life, and to the first son of the latter in tail male; and in default to other sons of his said nephew John Penn, according to priority of age in tail male; and then in like manner to his nephew Richard son of his brother Richard, and his sons; and in default of such issue, then unto the other sons of his brother Richard according to seniority of age in tail male. In default of such issue male, then unto his brother Thomas Penn *in tail general;* and in default, &c., unto his said nephew John Penn in tail general; and in default, &c., unto his said nephew Richard Penn in tail general; and so as to his brother Richard's other sons successively. With remainder to Richard's daughter Hannah for life, and to her sons successively in tail male; and then to her in tail general; and in default of such issue then to his brother Richard in tail general; and in default of such issue unto his sister Margaret Freame for life, and then to her sons in tail male, &c., &c.

The said will of John Penn, son of the first proprietary, empowered the tenant in possession of his moiety of the province and lower counties to convey and grant lands, of any estate how large soever, reserving by each grant of any lands as much quit-rent in proportion and the like services as had lately been generally reserved on other lands granted out by himself and brothers, &c., the purchase-moneys and fines to go to the possessor; the quit-rents to descend and go according to the limitations of the will.

By articles of agreement between the surviving sons of the first proprietary, made January 31st 1750, Thomas and Richard Penn confirmed the articles of 1732, and they made the like power of sale in fee as in John Penn's will, applicable to their respective fourth parts of the province of Pennsylvania, &c. And by further articles between them it was agreed that if either should leave no issue male, but issue female, the latter should take their father's share before all or any of the issue female of the other.

Richard Penn, son of the first proprietary, made his will, dated 21st March 1750, with several codicils, and died in 1771, leaving sons John Penn (called the elder) and Richard Penn, and daughter Hannah; and devised his share of Pennsylvania to his

son John Penn for life; remainder to John's sons successively in tail male; with further remainder to his son Richard Penn for life, and remainder to Richard's sons successively in tail male, &c., with further remainder to his son William Penn in tail male, and to William's sons successively in tail male, &c., with remainder to testator's brother Thomas for life, remainder to his sons in *tail male;* with further remainders to testator's sons John, Richard, and William, and other sons for estates *tail general*, &c., &c. With the like power as in his brother John's will, for the person in possession to grant and convey in fee. William, the third son, died in the lifetime of his father without issue.

Said Richard Penn, the testator, left two sons, John Penn, called the elder, Governor of Pennsylvania before the Revolution, who died in 1795, without issue; and Richard Penn, who died in 1811, leaving sons William and Richard, both of whom died without issue; William in 1845 or 6; Richard in 1863; whereby the male heirs of Richard Penn became extinct.

Thomas Penn, second son of the first proprietary, on the 15th August 1751 executed a deed of release as a marriage settlement with Julianna, daughter of the Earl of Pomfret, unto David Barclay and Thomas Hyam, conveying his fourth of Pennsylvania and the lower counties, whereby an annual charge was to be raised for her for life; reciting the preceding articles, to the use of said Thomas Penn for life; remainder to the use of his first and other sons severally and successively, according to priority of birth in tail male, &c., &c., and in default of such to his brother Richard Penn for life; remainder to his son John for life, and then to his sons in tail male successively; remainder to Richard's son Richard for life, and then to his sons in tail male successively; remainder to Richard's son William, and sons in like manner; remainders to *the heirs of the body of said Thomas Penn* (the grantor). With a power of sale in said Thomas Penn and others in possession for the time being, to sell and convey in fee, as in his brother John's will.

Thomas Penn died in 1775, leaving sons John and Granville. This John Penn (called the younger) erected and lived in the mansion, called "Solitude," in the present Fairmount park in Philadelphia, and died in 1834, without issue. Granville died in 1844, leaving issue Granville John Penn, who became tenant in tail male of three-fourths of the Pennsylvania titles under

the above limitations; and after his death in 1867, his younger brother Thomas Gordon Penn took the same shares as tenant in tail male; and he died without issue in 1869. Thus the issue male of Thomas Penn, son of the first proprietary, because extinct.

Thomas Penn left two daughters: Juliana Baker, who left only a daughter, the Countess of Ranfurly, and Sophia Margaretta, who married William Stuart, Archbishop of Armagh. She died a widow in 1847, leaving four children, William, Henry, Mary Juliana, and Louisa. William Stuart is the tenant in tail general of the estates limited by the deeds and wills of the three sons of William and Hannah Penn.

The preceding limitations are now material only as to lands within the proprietary manors, and the rents thence issuing. The Act of 27th November 1779, 1 Sm. Laws 479, which vested in the Commonwealth of Pennsylvania the lands of the proprietaries, for a compensation made, excepted the private estates, and the proprietary tenths or manors, with the quit or other rents reserved within the manors. One of these manors, Springettsbury, was immediately north of Vine street, Philadelphia, and several others existed in different parts of the state.

It is a question undecided here how long the power of sale in fee, with which the tenants in tail male were clothed, continued in force; but as it is not in restraint of alienation, but favors it, the power probably continued in all the tenants in tail male.

"It is settled, that an unlimited power of sale, to be exercised during successive estates tail, is not invalid for remoteness, for such a power may be destroyed with the estate tail:" Hill on Trustees 475; 4 Sim. 135, 138 n.; 3 M. & R. 249; 10 Sim. 225; 15 Sim. 353.

In 1799 the act was passed to bar entailments by deed expressing that purpose, acknowledged and recorded in court, and also recorded in the office for recording deeds within six months.

But deeds were made by the Penns after that date, without observance of the forms of the act, though generally it was otherwise; and without the reservation of any quit-rent, which the power of sale required.

General Thomas Cadwalader received the power of attorney of John Penn, of Stoke Pogis, in 1815; and of William Penn, son of Richard Penn, in 1817, then tenants in tail male, to make sales of their lands in Pennsylvania; and in 1831,

February 17th, he as their attorney made a deed of confirmation to Thomas W. Norris, Esq., for debarring every estate tail for grounds, before conveyed by numerous conveyances, within the manor of Springettsbury, in trust for all the purchasers: Deed Book A. McC. 6, p. 628. The question as to this would be whether the attorney would be authorized to make this confirmation as to lands he had not himself conveyed; though, perhaps, the court would presume after the lapse of time, that he had acted under instructions to that effect. He no doubt represented the honorable and just feelings of his constituents to make secure all the titles they had conveyed.

The final and complete act to confirm all titles made by the agents of the Penn family, was that of the present representative, and tenant in tail, of all the shares, under the advice of his counsel in Philadelphia. By deed of 11th November 1870, from William Stuart, Esq., and wife, to William Levi Bull, Esq., reciting himself as heir at common law in tail of John Penn the elder and John Penn the younger, Thomas Penn and Richard Penn or some of them by sundry deeds, wills or descents; and reciting former grants made by them of lands, tenements, &c., in the Commonwealth, by deeds insufficient to debar entailments, which grants the said William Stuart is desirous of confirming, he proceeds, for one dollar, to grant, for the purpose of debarring the entailment, "all and singular the lands, tenements, and hereditaments in the said Commonwealth, which the said John Penn the elder, John Penn the younger, the said Thomas Penn, the said Richard Penn, or any subsequent tenant in tail thereof, severally and respectively, either by themselves or their attorneys in fact have granted and conveyed to divers persons, for a full and valuable consideration, intending to grant and convey such premises to the purchasers in fee simple," to hold the same "to the use of every such purchaser or purchasers and their heirs and assigns, so as to enure to the benefit of all persons holding or claiming any estate, title, or encumbrance in or upon any such lands, tenements, and hereditaments, derived or created by or under any *bonâ fide* purchaser for a good and sufficient consideration from the said tenants in tail respectively, for the time being as aforesaid, with the intent that all such grants and conveyances by them or any of them so heretofore made, be hereby absolutely ratified, confirmed, and established." Acknow-

ledged in the Supreme Court of Pennsylvania, March 9th 1871, and recorded in Deed Book J. A. H., No. 123, p. 442.

Here is an act quietly done, and unknown except to a few individuals, of historical interest, and of great beneficence, and fittingly crowns the honorable dealings of all the Penn proprietaries with their settlers and successors. For more than a century, few even in the legal profession have understood the precise nature of the title and the powers of the Penns to the soil in Pennsylvania; and they have always been so honorably represented as to give to settlers and purchasers entire confidence without inquiry into the wills, articles of agreement, and marriage settlements of the family, few of which were of record or accessible within the province or state, and were first got together and printed by William Henry Rawle, Esq., in 1870. It was not known until then what would be the disposition of the heir coming through a female branch, whether to attempt to take advantage of defects and omissions or to confirm titles made by his predecessors, because he was wholly unknown to us. The deed above recited sufficiently proves that to William Stuart, Esq., we owe thanks and gratitude, and that we should hold his name and memory in honor, in common with all the Penns in their relations with the people of Pennsylvania.

ELI K. PRICE.

RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

CHARLOTTE D. LORD *v.* TOWN OF LITCHFIELD.

The statute of 1702 with regard to gifts for charitable uses provides that all lands and estates that have been or shall be given by the General Assembly or by any town or person for the maintenance of the ministry of the gospel or for any other public and charitable use, shall for ever remain and be continued to such use, and shall be exempt from the payment of taxes. *Held*, that this statute did not constitute a contract between the state and either the donors or the donees of such charitable gifts, that the property so given should for ever be exempt from taxation, and that therefore a statute making it taxable in certain cases, was not unconstitutional.

If to be regarded as such a contract, a lease of the property for 999 years for a gross sum, without a reservation of rent, would be such a violation of the condition of the contract that the state would no longer be bound by it.